

HOUSE BILL 322

By Litz

AN ACT to amend Tennessee Code Annotated, Title 47,
relative to franchises.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, is amended by inserting sections 2 through 40 of this act as a new, appropriately designated part thereto.

SECTION 2. This part shall be known, and may be cited, as the "Tennessee Franchise Disclosure Act of 2007".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Administrator" means the office of attorney general and reporter;

(2)

(A) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two (2) or more persons by which:

(i) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and

(ii) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(iii) The person granted the right to engage in such business is required to pay, directly or indirectly, a franchise fee of five hundred dollars (\$500) or more;

(B) "Franchise" does not include any of the following persons, entities or relationships which may involve or acquire a franchise or any interest in a franchise:

(i) Any franchised business which is operated by the franchisee on the premises of the franchisor or subfranchisor as long as such franchised business is incidental to the business conducted by the franchisor or subfranchisor at such premises, including, without limitation, leased departments and concessions; or

(ii) A fractional franchise. "Fractional franchise" means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than two (2) years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than twenty percent (20%) of the sales in dollar volume of the franchisee for a period of at least one (1) year after the franchisee begins selling the goods or services involved in the franchise; or

(iii) A franchise agreement for the use of a trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(3) "Franchise broker" means any person engaged in the business of representing a franchisor in offering for sale or selling a franchise and is not a franchisor

or an officer, director or employee of a franchisor with respect to such franchise. A franchisee shall not be a franchise broker merely because it receives a payment from the franchisor in consideration of the referral of a prospective franchisee to the franchisor, if the franchisee does not otherwise participate in the sale of a franchise to the prospective franchisee. A franchisee shall not be deemed to participate in a sale merely because it responds to an inquiry from a prospective franchisee;

(4) "Franchise fee" means any fee or charge that a franchisee is required to pay directly or indirectly for the right to enter into a business or sell, resell, or distribute goods, services or franchises under an agreement, including, but not limited to, any such payment for goods or services, provided that the administrator may by rule define what constitutes an indirect franchise fee, and provided further that the following shall not be considered the payment of a franchise fee:

(A) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card;

(B) Amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services;

(C) The purchase or agreement to purchase goods for which there is an established market at a bona fide wholesale price;

(D) The payment for fixtures necessary to operate the business;

(E) The payment of rent which reflects payment for the economic value of the property; or

(F) The purchase or agreement to purchase goods for which there is an established market at a bona fide retail price subject to a bona fide commission or compensation plan. The administrator may by rule define what shall constitute an established market;

(5) "Franchisee" means a person to whom a franchise is granted and includes, unless stated otherwise in this part:

(A) A subfranchisor with regard to its relationship with a franchisor; and

(B) A subfranchisee with regard to its relationship with a subfranchisor;

(6) "Franchisor" means a person who grants a franchise and includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this part;

(7) (A) "Marketing plan or system" means a plan or system relating to some aspect of the conduct of a party to a contract in conducting business, including but not limited to:

(i) A specification of price, or special pricing systems or discount plans;

(ii) Use of particular sales or display equipment or merchandising devices;

(iii) Use of specific sales techniques; and

(iv) Use of advertising or promotional materials or cooperation in advertising efforts.

(B) An agreement is not a marketing plan or system solely because a manufacturer or distributor of goods reserves the right to occasionally require sale at a special reduced price which is advertised on the container or packaging material in which the product is regularly sold, if the reduced price is absorbed by the manufacturer or distributor;

(8) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise, any interest in a franchise or an option to acquire a franchise for value;

(9) "Order" means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the office of attorney general and reporter;

(10) "Person" means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization;

(11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television, or otherwise to disseminate to the public;

(12) "Rule" means any published regulation or standard of general application issued by the administrator;

(13) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value;

(14) "Salesperson" means any person employed by or representing a franchise broker in effecting or attempting to effect the offer or sale of a franchise; and

(15) "Subfranchise" means any contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, in consideration of the payment of a franchise fee in whole or in part for such right, to service franchises or to sell or negotiate the sale of franchises. Unless specifically stated otherwise, "franchise" includes "subfranchise"; and

(16) "Subfranchisor" means a person to whom the right to sell subfranchises is granted.

SECTION 4. Any provision in a franchise agreement that designates jurisdiction or venue in a forum outside of this state is void, provided that a franchise agreement may provide for arbitration in a forum outside of this state.

SECTION 5.

(a) An offer to sell a franchise is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the

place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state, and acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(b) An offer to sell a franchise is not made in this state merely because the franchisor circulates or there is circulated in this state an advertisement in:

(1) A bona fide newspaper or other publication of general, regular and paid circulation which has had more than two thirds (2/3) of its circulation outside this state during the past twelve (12) months;or

(2) A radio or television program originating outside this state which is received in this state.

SECTION 6.

(a) No person shall offer or sell any franchise required to be registered under this part unless the franchise has been registered under this part or is exempt under this part.

(b) No person shall offer or sell any franchise which is required to be registered under this part without first providing to the prospective franchisee at least fourteen (14) days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least fourteen (14) days prior to the receipt by such person of any consideration, whichever occurs first, a copy of a disclosure statement meeting the requirements of this part and registered by the administrator, together with a copy of all proposed agreements relating to the sale of the franchise. For the purposes of this part, delivery of a disclosure statement to a general partner of a partnership shall constitute delivery to the partnership and its partners and delivery of a disclosure statement to a

principal officer of a corporation shall constitute delivery to the corporation and its shareholders.

(c) A franchise broker subject to this part who is not first registered pursuant to this part, unless exempt from registration, shall not offer for sale or sell in this state any franchise required to be registered under this part.

(d) No person shall make or cause to be made any untrue statement of a material fact in any application, notice, or report filed with the administrator, or to omit to state in any application, notice, or report any material fact, or to fail to notify the administrator of any material change in such application, notice, or report, as required by this part.

SECTION 7.

(a) In connection with the offer or sale of any franchise made in this state, no person shall, directly or indirectly:

(1) Employ any device, scheme, or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) For the purposes of this section, a sale of a franchise is made in this state when:

(1) An offer to sell or buy a franchise is made in this state and accepted within or outside of this state;

(2) An offer to sell or buy a franchise is made outside of this state and accepted in this state;

(3) The offeree is domiciled in this state; or

(4) The franchised business is or will be located in this state.

SECTION 8.

(a) There shall be exempted from the provisions of Sections 6, 11, 12, 14 and 17 the offer or sale of a franchise by a franchisee for its own account if the sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee or requires payment of a reasonable transfer fee.

(b) There shall be exempted from the provisions of Sections 6, 11, 12, 14 and 17 the extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business by the franchisee.

SECTION 9. There shall be exempted from the provisions of Sections 6, 11, 12, 14 and 17 the offer and sale of a franchise if the prospective franchisee qualifies either as a bank, as defined in § 3(a)(2) of the federal Securities Act of 1933, whether acting in its individual or fiduciary capacity, or as an insurance company as defined in § 2(13) of the federal Securities Act of 1933.

SECTION 10. The administrator may by rule or order provide that any information required by Section 17 to be included in the disclosure statement need not be included in respect of any class of franchises if the administrator finds that the requirement of such information is inapplicable to such class and that disclosure fully adequate for the protection of prospective franchisees is otherwise required to be included within the disclosure statement. The administrator may by rule or order, and subject to such terms and conditions as the administrator may prescribe, exempt any franchise, franchisor, subfranchisor, or franchise broker from Sections 6, 11, 12 and 14 if the administrator finds that the enforcement of this part

is not necessary for the protection of the public interest or for the protection of any class of prospective franchisees, or by reason of the investment involved, or because of the limited character of the offering. The disclosure statement required by Section 17 need not be furnished to a franchisee who has already been furnished with a copy of such disclosure statement in connection with a prior purchase of a franchise by such franchisee, provided that no material amendments have been made to such disclosure statement since it was furnished to such franchisee.

SECTION 11.

(a) No franchisor may sell or offer to sell a franchise in this state if the franchisee is domiciled in this state, or the offer of the franchise is made or accepted in this state and the franchise business is or will be located in this state, unless the franchisor has registered the franchise with the administrator by filing such form of notification and disclosure statement as required under Section 17.

(b) The registration of a franchise shall become effective on the twenty-first day after the date of the filing of the required materials, unless the administrator has denied registration under Section 23 (a)(3).

(c) Annually, but not later than one (1) business day before the anniversary date of the registration, the franchisor shall file the disclosure statement updated as of a date within one hundred twenty (120) days of the anniversary date of the registration.

SECTION 12. Within ninety (90) days of the occurrence of any material change in any facts required to be disclosed, a franchisor whose franchise is registered under this part shall amend its disclosure statement and shall deliver the amended disclosure statement in accordance with the requirements of Section 6 (b) and Section 17 to any prospective franchisee, including prospective franchisees to whom a disclosure statement was previously delivered if the material change relates to or affects the franchisor or the franchise offered to

such prospective franchisees. The amended disclosure statement shall be filed with the administrator. An amendment shall not be required if the terms of the franchise agreement merely reflect changes from the franchisor's registered franchise made pursuant to negotiations between the franchisee and the franchisor. The fact that the franchise is considered to be registered is not a finding that the amended disclosure statement complies with the standard of disclosure required by this part.

SECTION 13. The registration of a franchise and the disclosure statement used in connection therewith shall continue to be effective unless the administrator issues an order suspending, terminating, prohibiting or denying the sale or registration of the franchise under this part.

SECTION 14. A franchise broker shall not offer or sell a franchise which is required to be registered under this part, unless the franchise broker first registers under this part by filing an application in a form prescribed by the administrator and a consent to service of process, if required, and files with the administrator, for each salesperson who represents the franchise broker in the offer or sale of franchises which are required to be registered under this part such information as the administrator may by rule require. The administrator may prescribe rules governing the sale of a franchise by a franchise broker including qualifications, conduct, suspension, termination, prohibition or denial of the registration of a franchise broker. The registration of a franchise broker shall be effective for a period of one (1) year from the registration date, and may be renewed for periods of one (1) year, unless the administrator by rule or order prescribes a different period.

SECTION 15. The fact that a franchise has been registered by the administrator is not a finding by the administrator that the disclosure statement filed with the administrator in connection with that registration is in any way true, accurate or complete in substance or on its face, or to be held to mean that the administrator has in any way passed upon the merits or

given approval to such franchise. It is unlawful to make, or cause to be made, to any prospective franchisee any express or implied representation contrary to the foregoing or to advertise or represent that the administrator approves of or recommends any franchise.

SECTION 16. If the administrator finds that a franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items to be included in the establishment and opening of the franchise business being offered, the administrator may by rule or order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until such obligations have been fulfilled, or, at the option of the franchisor, the furnishing of a surety bond as provided by rule of the administrator, if the administrator finds that such requirement is necessary and appropriate to protect prospective franchisees.

SECTION 17. The disclosure statement required under this part shall be prepared in accordance with the Uniform Franchise Offering Circular Guidelines as adopted and amended by the North American Securities Administrators Association. All statements in the disclosure statement shall be free from any false or misleading statement of a material fact, shall not omit to state any material fact required to be stated or necessary to make the statements not misleading, and shall be accurate and complete as of the effective date of the disclosure statement.

SECTION 18. It is an unfair franchise practice and a violation of this part for a franchisor to restrict in any way any franchisee from joining or participating in any trade association.

SECTION 19. It is an unfair franchise practice and a violation of this part for any franchisor to unreasonably and materially discriminate between franchisees operating a franchised business located in this state in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, if such discrimination will cause competitive harm to a franchisee who competes with a franchisee that received the

benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is:

(1) Based on franchises granted at different times, and such discrimination is reasonably related to such differences in time;

(2) Related to one (1) or more programs for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;

(3) Related to local or regional experimentation with or variations in product or service lines or business formats or designs;

(4) Related to efforts by one (1) or more franchisees to cure deficiencies in the operation of franchise businesses or defaults in franchise agreements; or

(5) Based on other reasonable distinctions considering the purposes of this part and is not arbitrary.

SECTION 20.

(a) It is a violation of this part for a franchisor to terminate a franchise of a franchised business located in this state prior to the expiration of its term except for good cause as provided in subsection (b) or (c).

(b) "Good cause" shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice of the default and a reasonable opportunity to cure such default, which in no event need be more than thirty (30) days.

(c) "Good cause" shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee:

(1) Makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business;

(2) Voluntarily abandons the franchise business;

(3) Is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor's trademark, service mark, trade name or commercial symbol; or

(4) Repeatedly fails to comply with the lawful provisions of the franchise or other agreement.

SECTION 21. No franchisor shall refuse to renew a franchise of a franchised business located in this state without compensating the franchisee either by repurchase or by other means for the diminution in the value of the franchised business caused by the expiration of the franchise where:

(1) The franchisee is barred by the franchise agreement, or by the refusal of the franchisor at least six (6) months prior to the expiration date of the franchise to waive any portion of the franchise agreement which prohibits the franchisee, from continuing to conduct substantially the same business under another trademark, service mark, trade name or commercial symbol in the same area subsequent to the expiration of the franchise; or

(2) The franchisee has not been sent notice of the franchisor's intent not to renew the franchise at least six (6) months prior to the expiration date or any extension thereof of the franchise.

SECTION 22.

(a)(1) The administrator may suspend, terminate, prohibit or deny the sale of any franchise or registration of any franchise, or franchise broker or salesperson if it appears to the administrator that:

(A) There has been a failure to comply with any of the provisions of this part or the rules or orders of the administrator pertaining to this part;

(B) That the disclosure statement or any amendment to the statement includes any false or misleading statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading;

(C) That the disclosure statement filed in conjunction with an initial registration under Section 11 is materially deficient. A disclosure statement is materially deficient if it fails to comply with the requirements of the uniform franchise offering circular guidelines;

(D) That the sale of the franchise would constitute a misrepresentation, deceit or fraud upon prospective franchisees;

(E) That any person in this state is engaging in or about to engage in false, fraudulent or deceptive practices or any device, scheme, or artifice to defraud in connection with the offer or sale of the franchise;

(F) That any person identified in the disclosure statement or any person engaged in the offer or sale of the franchise in this state has been convicted of an offense, is subject to an order or civil judgment or is a defendant in a proceeding required to be described in the disclosure statement and the involvement of such person creates an unreasonable risk to prospective franchisees; or

(G) That the franchisor's enterprise or method of business includes or would include activities which are illegal where performed.

(2) In no case shall the administrator, or any person designated by the administrator, in the administration of this part, incur any official or personal liability by issuing an order or other proceeding or by suspending, denying, prohibiting or terminating the registration of a franchise broker or salesperson, or by denying,

suspending, terminating or prohibiting the registration of franchises, or prohibiting the sale of franchises, or by suspending or prohibiting any person from acting as a franchise broker or salesperson. The administrator may exercise any of the powers specified in Section 33.

(b) The administrator, with such assistance as the administrator may from time to time request of the district attorneys general in the several counties, may institute proceedings in the circuit court to prevent and restrain violations of this part or of any rule or order prescribed or issued under this part. In such a proceeding, the court shall determine whether a violation has been committed, and shall enter such judgment or decree as it considers necessary to remove the effects of any violation and to prevent such violation from continuing or from being renewed in the future. The court, in its discretion, may exercise all powers necessary for this purpose, including, but not limited to, injunction, revocation, forfeiture or suspension of the charter, franchise, certificate of authority or privileges of any corporation, association, limited partnership or other business organization operating under the laws of this state, dissolution of domestic corporations or associations, suspension or termination of the right of foreign corporations or associations to do business in this state, or restitution or payment of damages by a franchisor to persons injured by violations of this part, including without limitation an award of reasonable attorneys fees and costs.

SECTION 23. The administrator may summarily issue an order prohibiting, suspending, terminating or denying the sale of a franchise or registration of a franchise or franchise broker if such order is within the public interest and Section 22, provided the administrator shall promptly notify the person or entity affected, in writing, of the entry of an order under this part and of the reasons for the order. Upon receipt of a written request from such person or entity, the matter will be set down for hearing to commence within ten (10) days after such receipt, unless the

franchisor, or franchise broker consents to a later date. If a hearing is not requested within fifteen (15) days from the date of the order and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and hearing, may modify or vacate the order or extend it until its final determination.

SECTION 24. In lieu of any penalty provided pursuant to Section 25, and in addition to an action pursuant to Section 22 (b), the administrator may bring an action in the name and on behalf of the people of the state against any person, trustee, manager or other officer or agent of a corporation, or against a corporation, domestic or foreign, to recover a penalty in a sum not to exceed fifty thousand dollars (\$50,000) per violation for any violation of this part. The action must be brought within three (3) years after the commission of the act upon which it is based.

SECTION 25. Any person who willfully sells a franchise in this state without complying with Sections 6, 7, 11, 12, 14 or 17 or who in a disclosure statement or an amendment to the statement willfully makes any false or misleading statement of a material fact or willfully omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, commits a class B felony. The administrator, with such assistance as the administrator may from time to time request of the district attorneys general in the several counties, shall investigate suspected criminal violations of this part and shall commence and try all prosecutions under this part. A prosecution for any offense under this part must be commenced within three (3) years after the commission of the offense. Nothing in this part limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

SECTION 26.

(a) Any person who offers, sells, terminates, or fails to renew a franchise in violation of this part shall be liable to the franchisee who may sue for damages caused

thereby. In the case of a violation of Section 6, 7, 11, 12, or 17, the franchisee may also sue for rescission.

(b) No franchisee may sue for rescission under this Section 26 who shall fail, within thirty (30) days from the date of receipt thereof, to accept an offer to return the consideration paid or to repurchase the franchise purchased by such person. Every offer provided for in this section shall be in writing, shall be delivered to the franchisee or sent by certified mail addressed to the franchisee at such person's last known address, shall offer to return any consideration paid or to repurchase the franchise for a price equal to the full amount paid less any net income received by the franchisee, plus the legal rate of interest thereon, and may require the franchisee to return to the person making such offer all unsold goods, equipment, fixtures, leases and similar items received from such person. Such offer shall continue in force for thirty (30) days from the date on which it was received by the franchisee and shall advise the franchisee of such rights and the period of time limited for acceptance of the offer. Any agreement not to accept or refusing or waiving any such offer made during or prior to the expiration of the thirty (30) days shall be void.

(c) The term "franchisee" as used in this section shall include the personal representative or representatives of the franchisee.

(d) Every person who directly or indirectly controls a person liable under this Section 26, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, and every employee of a person so liable, who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless said person who otherwise is liable had no

knowledge or reasonable basis to have knowledge of the facts, acts or transactions constituting the alleged violation.

(e) Every franchisee in whose favor judgment is entered in an action brought under this section shall be entitled to the costs of the action including, without limitation, reasonable attorney's fees.

SECTION 27. No action shall be maintained under Section 26 to enforce any liability created by this part unless brought before the expiration of three (3) years after the act or transaction constituting the violation upon which it is based, the expiration of one (1) year after the franchisee becomes aware of facts or circumstances reasonably indicating that it may have a claim for relief in respect to conduct governed by this part, or ninety (90) days after delivery to the franchisee of a written notice disclosing the violation, whichever shall first expire. No cause of action barred under existing law on the effective date of this part shall be revived by this part. Every cause of action under this part survives the death of any person who might have been a plaintiff or defendant.

SECTION 28. Except as explicitly provided in this part, no civil liability in favor of any person shall arise against any person by implication from or as a result of the violation of any provision of this part. Nothing in this part shall limit any liability which may exist by virtue of any other statute or under common law if this part were not in effect. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this part.

SECTION 29. In any civil or criminal action brought under this part, a certificate under the seal of this state, signed by the administrator, stating whether or not a franchise is registered, or whether or not an annual report of a franchisor has been filed under Section 11, or whether or not a person has registered as a franchise broker under Section 14, shall constitute

prima facie evidence of such matter, and shall be admissible into evidence at trial without proof of foundation or additional authenticity.

SECTION 30.

(a) The administrator may:

(1) Make such public or private investigations inside or outside this state as the administrator deems necessary to:

(A) Determine whether any person has violated, is violating, or is about to violate any provision of this part or any rule or order prescribed or issued under this part; or

(B) Aid in the enforcement of this part or in the prescribing of rules under this part; and

(2) Publish information concerning the violation of this part or any rule or order prescribed or issued under this part. No actions taken or orders issued by the administrator shall be binding, nor in any way preclude the administrator from conducting any investigation or commencing any action authorized under this part. The administrator or any of the administrator's assistants may participate in any hearings conducted by the administrator under this part and the administrator may provide such assistance as the administrator believes necessary to effectively fulfill the purposes of this part.

(b) For the purpose of any investigation or proceeding under this part and prior to the commencement of any civil or criminal action as provided for in this part, the administrator has the authority to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records or tangible things, hereafter referred to as "documentary material", which the administrator deems relevant or material to the administrator's investigation, for inspection,

reproducing or copying under such terms and conditions as are set forth in this part.

Any subpoena issued by the administrator shall contain the following information:

(1) The statute and section of the statute, the alleged violation of which is under investigation;

(2) The date, place and time at which the person is required to appear or produce documentary material in the person's possession, custody or control at a designated office of the administrator, which date shall not be less than ten (10) days from date of service of the subpoena; and

(3) Where documentary material is required to be produced, the same shall be prescribed by class so as to clearly indicate the material demanded.

(c) The administrator is hereby authorized, and may so elect to require the production, pursuant to this section of documentary material prior to the taking of any testimony of the person subpoenaed, in which event such documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be agreed upon by the person served and the administrator. When documentary material is demanded by subpoena, the subpoena shall not:

(1) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(2) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(d) Service of a subpoena of the administrator may be made by:

(1) Delivery of a duly executed copy of the subpoena to the person served or if a person is not a natural person, to the principal place of business of the person to be served; or

(2) Mailing by certified mail, return receipt requested, a duly executed copy of the subpoena addressed to the person to be served at his principal place of business in this state, or, if the person has no place of business in this state, to the person's principal office.

(e) The examination of all witnesses under this section shall be conducted by the administrator, or by the administrator's designated deputy, before an officer authorized to administer oaths in this state. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

(f) All persons served with a subpoena by the administrator under this part shall be paid the same fees and mileage as are paid to witnesses in the courts of this state.

(g) In the event a witness served with a subpoena by the administrator under this part fails or refuses to obey the subpoena or to produce documentary material or to give testimony relevant or material to the investigation being conducted, the administrator may petition any circuit court for an order requiring the witness to attend and testify or produce the documentary material demanded. Thereafter, any failure or refusal on the part of the witness to obey the order of court may be punishable by the court as contempt.

(h) No person is excused from attending and testifying or from producing any document or records before the administrator in obedience to the subpoena of the administrator, in any proceeding instituted by the administrator and authorized by this part, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject the person to a penalty or

forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(i) In any action brought under the provisions of this part, the administrator is entitled to recover costs for the use of this state.

SECTION 31. The administrator is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The administrator may in the administrator's discretion honor requests for interpretive opinions. The administrator shall maintain a complete collection of such interpretive opinions which is properly indexed, a copy of which shall be made available to any person upon request and payment of a reasonable fee to be determined by the administrator.

SECTION 32. Any hearing before the administrator conducted pursuant to this part shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and any final administrative decision shall be subject to judicial review as provided in that chapter.

SECTION 33. Sufficient service of any process in any action brought under this part may be made by serving a copy of the process with the agency designated to receive process in the disclosure statement filed with the administrator or in the absence of such agent at the principal business address set forth in the disclosure statement. Where no disclosure statement has been filed and personal jurisdiction cannot otherwise be obtained in this state over a person who engaged in conduct prohibited or made actionable by this part or any rule or order hereunder, that conduct shall be considered equivalent to the appointment of the administrator

to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against that person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this part or any rule or order under this part, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless:

(1) The plaintiff immediately sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's last known address or takes other steps which are reasonably calculated to give actual notice; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

SECTION 34. Every franchisor selling franchises in this state shall at all times keep and maintain a complete set of books, records and accounts of such sales.

SECTION 35.

(a) All disclosure statements and other papers and documents received by the administrator under this part shall be open to public inspection, except that the administrator may, in the administrator's discretion, withhold from public inspection any information the disclosure of which is, in the judgment of the administrator, not necessary in the public interest or for the protection of franchisees. The administrator may publish any information filed with or obtained by the administrator if in the judgment of the administrator such action is in the public interest. No provision of this part authorizes the administrator or any of the administrator's assistants, clerks or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this part or to

other federal or state regulatory agencies. No provision of this part either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any of his assistants, clerks or deputies.

(b) The administrator and the administrator's employees may not use for personal benefit any information which is obtained by them under this part and which is not then generally available to the public.

SECTION 36. On request and at such reasonable charges as prescribed by rule, the administrator shall furnish to any person photostatic or other copies, certified under the seal of office if requested, of any document which is retained as a matter of public record. The administrator shall not charge or collect any fee for copies of any document furnished to public officers for use in their official capacity. In any judicial proceeding or prosecution, any copy so certified is prima facie evidence of the contents of the document certified.

SECTION 37.

(a) The administrator may destroy any disclosure statements or orders, together with the files and folders, as useless or obsolete, four (4) years after the date of receipt or issuance. A permanent record shall be maintained of any civil or criminal enforcement of this part by the administrator.

(b) Copies on microfilm or in other form which may be retained by the administrator in the administrator's discretion of any records destroyed under authority of this section shall be accepted for all purposes as equivalent to the original when certified by the administrator.

SECTION 38.

(a) The administrator shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the state treasurer

at least weekly, accompanied by a detailed statement of the fees and charges. Such fees and charges shall be refundable at the discretion of the administrator.

(b) The fee for the initial registration of a franchise shall be five hundred dollars (\$500).

(c) The fee for filing an amended disclosure statement shall be one hundred dollars (\$100) if the amendment pertains to a material change, otherwise twenty-five dollars (\$25.00).

(d) The fee for an interpretive opinion shall be fifty dollars (\$50.00).

(e) The fee for registration of a franchise broker shall be one hundred dollars (\$100) with a renewal fee of one hundred dollars (\$100).

(f) The fee for filing an annual report shall be one hundred dollars (\$100).

SECTION 39. This part shall not apply to any person otherwise subject to the provisions of part 15 of this chapter if such application would be inconsistent with the requirements of part 15 of this chapter.

SECTION 40. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this part or any other law of this state is void. This section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this part, nor shall it prevent the arbitration of any claim pursuant to the provisions of title 9 of the United States Code.

SECTION 41. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 42. This act shall take effect July 1, 2007, the public welfare requiring it.

